

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BOARD OF EDUCATION OF THE CITY OF)
CHICAGO,)

Plaintiff)

v.)

Case No: _____

CHICAGO TEACHERS UNION, Local NO. 1,)
American Federation of Teachers, AFL-CIO,)

Defendant)

**VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES**

Plaintiff Board of Education of the City of Chicago (the “Board of Education”) complains of Defendant Chicago Teachers Union, Local No. 1, American Federation of Teachers, AFL-CIO (the “CTU”) as follows:

NATURE OF THE ACTION

1. On September 10, 2012, approximately 26,000 members of the Chicago Teachers Union went on strike in the City of Chicago for the first time in twenty-five years. The Board brings this action for injunctive relief pursuant to Sections 4.5(b) of the Illinois Educational Labor Relations Act (“IELRA”), which expressly prohibits the CTU from striking over disputes concerning noneconomic subjects enumerated in Section 4.5, such as layoff and recall rights, class size, and length of the school day and school year, and deprives the Illinois Educational Labor Relations Board (“IELRB”) of jurisdiction over Section 4.5 disputes. 115 ILCS 5/4.5(b).

2. The CTU, through its public pronouncements, literature and contract demands has made it abundantly clear that it is waging this strike over issues and in pursuit of bargaining objectives the Illinois General Assembly has expressly determined cannot be the subject of a

lawful strike. These include the CTU's bargaining demands over layoff and recall rights for its members, class size, the length of the work and school year, the academic calendar, and class staffing and assignment. Further, the Union has deployed the strike weapon without regard for, and in violation of, its binding commitment to resolve disputes or impasses over these subjects through a mandatory mediation process agreed to by the parties and in place pursuant to statute since 2003.

3. The strike has affected nearly 355,000 students in the Chicago Public School ("CPS") system, a school system utterly unlike any other school system in Illinois, characterized by a student population strongly dependent upon a broad range of services extending far beyond the education they receive. Approximately 84% of these students come from low income families and they receive free or reduced price meals when school is in session. For many if not most of these students, the meals they receive at school are the only nutritious meals they receive on a regular school day. Additionally, while the City of Chicago makes every effort to reduce violence in our neighborhoods, the fact is that CPS students, like students in many urban areas, are at risk of violence when they are not in school. Finally, some 50,000 of these students qualify for special education services because of a range of conditions, including autism and other profound disabilities. Because of the strike, special needs students with Individual Education Programs may no longer be receiving their required special education services. All of these students now face the all too real prospect of prolonged hunger, increased risk of violence, and disruption of critical special educational services, and all because of decisions not of their making, in which they did not have a voice or a vote. At a critical time in their lives, a vulnerable population has been cast adrift by the CTU's decision to close down the schools, with consequent grave implications for the residents of the City of Chicago. These extreme hardships

imposed on hundreds of thousands of students constitute a clear and present danger to the health and safety of the public, caused by the CTU's strike that is fundamentally and unmistakably illegal under Illinois law.

4. Following commencement of the CTU strike on Monday, September 10, 2012, the parties continued negotiations for a final labor agreement to resolve the strike, with the result that on Friday, September 14, 2012, both sides reported reaching a framework for an agreement to end the strike. The parties finalized language on a tentative agreement over the weekend, and on Sunday, September 16, 2012, a final, tentative agreement was presented by the CTU senior bargaining committee to the CTU House of Delegates for a vote to end the strike and return students to school on Monday, September 17, 2012.

5. Notwithstanding the tentative agreement reached at the bargaining table, on the evening of September 16, 2012, the CTU failed to vote on the parties' agreement, failed to vote to end the strike, and scheduled another meeting on the subject of the strike for Tuesday, September 18, 2012. As a result, the CTU has advised that its strike will continue for an unknown duration while the House of Delegates reviews the agreement, notwithstanding the above described clear and present danger that continuation of the strike poses to the health and safety of the public.

6. Despite the CTU strike being a clear violation of Illinois law, the Board of Education did not move to enjoin the strike earlier because it had hoped to resolve the dispute at the negotiating table. With no end to the strike in sight, the Board now brings this action for injunctive relief pursuant to Sections 4.5 of the IELRA. A second and independent ground for the action is Section 13(b) of the IELRA, which expressly provides this court this Court the

authority to grant an injunction when a “strike is or has become a clear and present danger to the health or safety of the public.” 115 ILCS 5/13(b).

THE PARTIES

7. The Board of Education is statutorily charged with the governance, maintenance and financial oversight of CPS.

8. CPS is located in Cook County, Illinois. It is the third largest school district in the nation, serving 400,000 students in 675 schools and employing over 40,000 employees.

9. Regular track CPS schools had their first day of school on Tuesday, September 4, 2012. Year-round, or “Track E,” schools began their school year on August 13, 2012.

10. The Board of Education is organized under and primarily operates pursuant to Article 34 of the Illinois School Code and is an educational employer under Section 2(a) of the IELRA.

11. The CTU is a labor organization under Section 2(c) of the IELRA and is the exclusive bargaining representative of CPS’s teachers, paraprofessional and school-related educational personnel.

COUNT ONE

THE CTU STRIKE VIOLATES SECTION 4.5 OF THE IELRA

12. Section 4.5 of the IELRA prohibits strikes over certain subjects of bargaining by unions representing CPS employees, including the CTU. In lieu of a strike, Section 4.5 requires that bargaining disputes over these topics be resolved exclusively through an alternative dispute resolution process. 115 ILCS 5/4.5. CTU’s strike is in direct violation of this statutory mandate.

13. Section 4.5(b) of the IELRA prohibits strikes over the following subjects of bargaining, among others, set forth in Section 4.5(a) of the IELRA:

- Decisions to layoff or reduce in force employees;

- Decisions to determine class size, class staffing and assignment;
- Class schedules, academic calendar;
- Length of the work and school day and year;
- Hours and places of instruction; and
- Pupil assessment policies.

115 ILCS 5/4.5(a).

14. Section 4.5(b) also provides that:

If, after a reasonable period of bargaining, a dispute or impasse exists between the educational employer and the exclusive representative, *the dispute or impasse shall be resolved exclusively as set forth in subsection (b) of Section 12 of this Act in lieu of a strike under Section 13 of this Act.* Neither the [IELRB] nor any mediator or fact-finder . . . shall have jurisdiction over such a dispute or impasse.

115 ILCS 5/4.5(b) (emphasis added).

15. Section 12(b) of the IELRA provides that, if a dispute or impasse exists between the Board and the representative of its employees “over a subject or matter set forth in Section 4.5 of this Act, the parties shall submit the dispute or impasse to the dispute resolution procedure agreed to between the parties.” 115 ILCS 5/12(b).

16. As required by Section 12(b) of the IELRA, the Board of Education and the CTU negotiated and agreed to a procedure to resolve disputes covered by Section 4.5 of the IELRA. The parties’ agreement provides for mediation that either party may initiate by providing written notice to the other party. Exhibit A to the Verified Complaint.¹

17. Since November 2011, the Board of Education and the CTU have been negotiating a successor collective bargaining agreement to the one that expired June 30, 2012.

¹ All exhibits to this Verified Complaint are attached and referenced hereafter as “Exhibit _.”

The CTU's initial contract proposal addressed numerous topics, including a number of Section 4.5 subjects, such as class size, layoff and recall, length of the work and school year, and class staffing and assignment. Exhibit B. The CTU repeatedly has acknowledged the importance of these subjects to its members and its bargaining agenda and has continued to advance these subjects throughout negotiations. *See infra* ¶¶ 19-31.

18. On April 2, 2012, the CTU invoked the IELRA's fact-finding process, which is a separate and distinct process from the dispute resolution procedure required by Sections 4.5 and 12(b). The CTU submitted numerous Section 4.5 subjects to the fact-finding process. Exhibits C, D, and E.

19. On June 1, 2012, the CTU announced that it would conduct a strike authorization vote among its membership. In its announcement, the CTU described its primary disputed issues in bargaining, all of which are Section 4.5 subjects: class size, staffing levels, layoff and recall, length of the school and work day and compensation for working a longer day, and length of the work and school year. Exhibit F.

20. In explaining why it would not wait to conduct the strike authorization vote until after the legislatively-prescribed fact finder issued his report, the CTU again emphasized that its dispute with the Board of Education was about Section 4.5 subjects, many of which would not be addressed by the fact finder. The CTU stated that the fact-finding report "will only cover a small portion of disagreements between the CTU and CPS," and "[t]his report will not address some of the other key issues such as class size and resources for CPS students currently being negotiated." The CTU also stated that the strike authorization vote was not "just about the money," and that instead, the CTU was fighting for smaller class sizes, resources for students and schools, job security and adequate compensation for being required to work 20 percent

longer, all of which are Section 4.5 subjects. Exhibit G. All of these are permissive bargaining subjects the CTU may not lawfully strike over, and several, including class size and those going to class staffing and assignment, and class schedules, are Section 4.5 subjects for which the exclusive dispute remedy is the parties' mandatory mediation procedure.

21. The CTU acknowledged that the strike authorization vote was leverage to be used to negotiate over the summer months regarding issues including many Section 4.5 subjects, such as teacher compensation for a longer work day, class size, and layoff and recall. The CTU also has acknowledged that the vote was driven by member anxiety over the longer school day, a Section 4.5 subject. Exhibits H, I, and J.

22. On July 16, 2012, the fact finder issued recommendations for the terms of a successor agreement, and on July 18, 2012, both the Board of Education and the CTU rejected this report in its entirety. In its rejection, the CTU once again emphasized various Section 4.5 subjects, including class size, compensation for working a longer day, and layoff and recall as its key areas of concern in negotiations. Exhibits K, L, and M.

23. In August 2012, the CTU threatened to strike over Section 4.5 subjects. During the week of August 20-24, 2012, the CTU conducted informational picketing, which the CTU stated was necessary to "inform parents and the public about what's really at stake" in negotiations. Once again this picketing told parents and the public that what was "really at stake" were Section 4.5 subjects. CTU members carried picket signs, including signs demanding "smaller class sizes" and increased staffing levels for "nurses, counselors and social workers," and CTU officials distributed handbills demanding smaller class sizes. Exhibits N and O.

24. On August 22, 2012, at a meeting of the CTU's House of Delegates, CTU officials emphasized the CTU's three key priorities for a successor contract, at least two of which

are Section 4.5 subjects: recall rights, issues related to a longer school day, and fair compensation for more challenging work. Exhibit P. At the conclusion of the meeting, the House of Delegates voted to provide notice of the CTU's intent to strike. Exhibit Q.

25. On August 29, 2012, the CTU submitted written notice of its intent to strike, stating that the imposition of the longer school day and the requirements that teachers teach new curricula as part of that longer day and be evaluated based on student test results was "enough." The CTU also cited its concern about school closings and the privatization of public education in connection with its written notice of intent to strike. Exhibits R and S.

26. On August 31, 2012, the CTU ran a radio announcement called "Why We Fight" to inform teachers and the public why it was threatening to strike. This advertisement emphasized again that "[t]his isn't about the money" but, instead, the CTU is concerned about recall rights for its members and other Section 4.5 subjects. Exhibit T.

27. On September 7, 2012 CTU President Karen Lewis, in a letter to CPS CEO Jean Claude Brizard, expressly acknowledged that the CTU is prohibited from striking over Section 4.5 matters and tacitly acknowledged that the CTU had repeatedly told teachers and the public that it was striking over such matters. Lewis belatedly purported to "disavow" these repeated public statements. Exhibit U. Unlike CTU's many public statements both before this letter (see discussion above) and after this letter (see discussion below), this letter was not shared with teachers or the public. And even if it had been, it would not change the facts concerning CTU's repeated statements and actions, before and since the strike, making clear that the CTU is striking in support of, and conditioning any settlement of the strike on, its demands over Section 4.5 subjects.

28. On September 9, 2012, the day before striking, CTU Vice President Jesse Sharkey, in an interview with ABC7 news, again made clear that a strike would not be over economic issues, but pedagogical issues and other Section 4.5 subjects. He stated that “[t]he economics of the deal are close” and that job security was one of the main sticking points. Sharkey also said that “[i]f we settle on the big education issues we can come to a settlement on this deal.” Exhibit V.

29. On the evening of Sunday, September 9, 2012, in the course of negotiations over the CTU’s bargaining demands necessary for an agreement and to avoid a strike, the CTU advised the Board of Education that the CTU’s demands regarding the recall rights for laid off CTU members is a “deal breaker.”

30. Later that evening, when announcing that the CTU would strike the following day, CTU President Karen Lewis cataloged numerous Section 4.5 subjects as reasons for the CTU strike. Lewis went on to say that “[w]hile new Illinois law prohibits us from striking over the recall of laid-off teachers and compensation for a longer school year, we do not intend to sign an agreement until these matters are addressed.” Thus, the CTU President specifically conditioned any settlement of the strike and final agreement on the resolution of disputes over Section 4.5. subjects, about which the CTU is expressly prohibited from striking. Exhibit W.

31. Similarly, in the questions and answer session after the announcement of the strike, CTU Vice President Sharkey again emphasized that economic issues are not the point. Rather pedagogical issues, which are Section 4.5 subjects, are.

32. The CTU’s strike is patently unlawful under the plain language of Section 4.5 of the IELRA. Injunctive relief from this Court is appropriate to enjoin the CTU’s illegal strike in

violation of Section 4.5, which expressly states that the IELRB does not have jurisdiction over Section 4.5 disputes. *See* 115 ILCS 5/4.5(b).

33. It is unmistakably clear that the CTU is engaged in an illegal strike over Section 4.5 subjects. Simply put, the plain language of Section 4.5 and Section 12(b) of the IELRA prohibit the CTU from striking over Section 4.5 subjects. In defiance of this statutory mandate, the CTU publicly has admitted time and again that its priorities for a successor contract are Section 4.5 subjects, and that the strike is not about wages, but rather issues like layoff and recall, reduced class sizes, compensation for working a longer day, and staffing levels within CPS schools. CTU members are engaged in a strike over these subjects and have engaged in picketing that clearly identify these subjects as the focal point of their strike. The CTU's strike is illegal and is continuing and ongoing.

34. Equally incriminating, the CTU has unlawfully conditioned any settlement of the strike and a final labor agreement on the resolution of Section 4.5 subjects, including layoff and recall rights for its members, notwithstanding the prohibition against striking over such subjects.

35. The CTU's illegal strike over Section 4.5 subjects is causing irreparable harm and warrants injunctive relief. Illegal strike activity by public employees constitutes irreparable harm justifying injunctive relief. *See, e.g., City of Pana v. Crowe*, 57 Ill. 2d 547, 316 N.E.2d 513, 552-553 (1974) (recognizing that, in absence of legislative grant of right to strike, strike by Illinois public employees is unlawful and must be enjoined); *Board of Education of Comm. Unit School Dist. No. 2 v. Redding*, 32 Ill.2d 567, 572-576 (1965) (enjoining illegal strike of school custodial employees); *Anchorage Educ. Ass'n v. Anchorage Sch. Dist.*, 648 P.2d 993, 997-98 (Alaska 1982) (holding same and recognizing that, by making strike by teachers illegal,

legislature decided that teachers' strike would cause irreparable harm); *State of Del. v. Del. State Educ. Ass'n*, 326 A.2d 868, 875-76 (Del. Ch. 1974) (recognizing same).

36. The balance of harms clearly weighs in the Board of Education's favor. The Illinois General Assembly codified important public policy prohibiting strikes by CPS employees and their unions over Section 4.5 subjects when it created the mandatory dispute resolution process in lieu of allowing strikes. The CTU strike contravenes this legislative intent and express public policy and is plainly unlawful. The Board of Education does not have an adequate remedy at law.

37. The CTU strike is also illegal because it plainly violates the statutory dispute resolution process mandated by Section 4.5 and Section 12(b) of the IELRA, and agreed to by the parties in their Memorandum of Agreement. Exhibit A.

38. As such, an injunction of the CTU strike is warranted to preserve the alternative dispute resolution process mandated by Section 4.5 and Section 12(b) of the IELRA, and agreed to by the parties. *See, e.g., Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 26 L. Ed. 2d 199, 90 S. Ct. 1583 (1970) (enjoining strike over arbitrable dispute where necessary to avoid irreparable harm and preserve the parties' agreed upon arbitration procedure).

39. In sum, an injunction is required because the CTU's strike is unlawful, and because it is necessary to preserve the parties' agreed upon and statutorily mandated alternative dispute resolution process.

Wherefore, the Board of Education of the City of Chicago requests that the Court:

- 1) issue temporary, preliminary and permanent injunctive relief against the CTU, enjoining its current strike; and
- 2) grant such other relief, including monetary relief, as this Court deems appropriate.

COUNT TWO

THE CTU STRIKE IS A CLEAR AND PRESENT DANGER TO THE PUBLIC HEALTH AND SAFETY

40. The Board of Education, through CPS, provides educational and critical social services to students, including essential and nutritious meals to students who otherwise may not eat, a safe environment during school hours, and special education needs services.

41. First, the CTU strike is depriving many CPS students of necessary meals. Each regular school day, CPS serves more than 400,000 breakfasts, lunches, after-school snacks, and suppers to students, providing essential nutrition necessary for healthy growth and intellectual development. Approximately 84% of CPS students, or more than 338,000 kids, are eligible for free and reduced price school meals because of their family income level. For many of these students, these may be their only nutritious meals of the day. These meals provide a critical nutrition and hunger safety net for CPS students.

42. Moreover, families whose children qualify for the free and reduced meals program, which is fully funded by the U.S. Department of Agriculture (“USDA”), also qualify for the USDA’s Supplemental Nutrition Assistance Program (“SNAP”) (formerly Food Stamps). For a qualifying family of four, participating SNAP parents with two school age children enrolled in the free and reduced meals program through CPS receive approximately \$300 from SNAP at the beginning of each month to buy groceries. But this amount already reflects the assumption that the family’s two children who are students at CPS are receiving two or more free or reduced price meals per day, five days a week through CPS. With the schools closed during the CTU strike, the vast majority of these children are not receiving meals through CPS.

43. Aside from the significant logistical obstacles to trying to find and provide food service to hundreds of thousands of students during the strike, USDA regulations require that

CPS serve the meals in school. As a result, the CTU strike has created, and each day is exacerbating, a dangerous situation in which hundreds of thousands of Chicago's children in lower income families are going hungry. At the same time, CPS is facing massive food spoilage and the loss of approximately \$1.25 million per day in USDA funding.

44. This situation will only worsen as parents participating in SNAP exhaust their monthly food allowance without the meals anticipated to be provided to their children at school. This also is a clear and present danger to the health and safety of CPS students.

45. Second, school provides a safe haven for students from violence. No CPS student has been a victim of gun violence in a CPS school since at least 2007. Simply put, when students are not in school, they are decidedly less safe and more likely to be victims of gun violence than when they are in school.

46. In the recognition of the clear and present danger to the health and safety of CPS students, CPS has created and put into place a contingency plan for the strike, referred to as "Children First." As part of the plan, approximately 147 Children First site locations are open from 8:30 to 2:30 for CPS students. However, these sites can accommodate only approximately one-third of the students impacted by the strike. Finally, participation is voluntary, not compulsory, and so many students and families will choose not to participate. Students who are participating in the Children First contingency plan are receiving meals. But the many thousands of students who do not participate in the Children First plan are left without. For example, on September 10, 2012, the first day of the CTU strike, CPS served a total of only 4,800 meals to kids at the Children First sites, down from well over 400,000 meals served on a regular school day. The Children First program is a legitimate and necessary attempt to safeguard CPS

students, but it is not enough. Most CPS students are left without necessary nutrition, or a safe school environment because of the strike.

47. Additionally, CPS has over 50,000 students with special needs. These include students who suffer from autism, emotional disorders, Down syndrome and other severe disabilities. Because of the CTU strike, many of these students will not receive required special education and related services.

48. Under the Individuals with Disabilities Education Act (“IDEA”), students with disabilities have a right to receive a free appropriate public education. The IDEA requires that for every student with disabilities who has been determined to require special education and related services, an Individualized Education Program (“IEP”) must be developed. The IEP must include the special education and related services and supplementary aids and services that will be provided to enable the student: (1) to meet annual goals; (2) to participate and make progress in the general education curriculum, nonacademic parts of the school day and extracurricular activities; and (3) to be educated and integrated with age/grade appropriate nondisabled peers to the maximum extent appropriate.

49. Because of the strike, students with IEPs may no longer be receiving their required special education services. Students whose special education services are interrupted may suffer from loss of or decline in critical life skills, independent functioning, social and emotional development, behaviors or communication. Without a continuation of services, students may not recoup these skills at all, and likely will not recoup them at the same pace, as their nondisabled peers. Similarly, an interruption of services may disrupt students’ progress in developing critical skills and educational advancement, and will prevent them from attaining or maintaining goals.

50. In sum, because of the strike, students are deprived of essential nutritious meals, are exposed to an increased risk of violence, and are denied the special education services they need. The public safety and health is endangered when students do not receive the nutrition necessary for healthy growth and intellectual development, when students are exposed to violence, and when disabled students suffer a loss or decline in critical life skills and independent functioning because of a strike.

51. Section 13 of the IELRA limits the circumstances under which educational employees may strike, and Section 13(b) provides specifically, in relevant part, that:

If, however, in the opinion of an employer the strike is or has become a clear and present danger to the health or safety of the public, the employer may initiate in the circuit court of the county in which such danger exists an action for relief which may include, but is not limited to, injunction. The court may grant appropriate relief upon the finding that such clear and present danger exists.

115 ILCS 5/13(b).

52. As set forth in paragraphs 10 through 26, the CTU strike is a clear and present danger to the health and safety of the public. Therefore, this Court should grant appropriate relief and enter an injunction enjoining the strike.

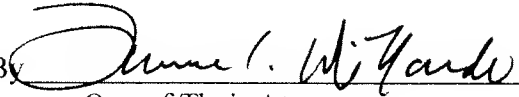
WHEREFORE, the Plaintiff Board of Education of the City of Chicago respectfully requests that the Court:

- 1) issue temporary, preliminary and permanent injunctive relief against CTU prohibiting it from engaging in a strike; and
- 2) grant such other relief, including monetary relief, as this Court deems appropriate.

Dated: September 17, 2012

Respectfully submitted,

BOARD OF EDUCATION OF THE CITY OF
CHICAGO

By 

One of Their Attorneys

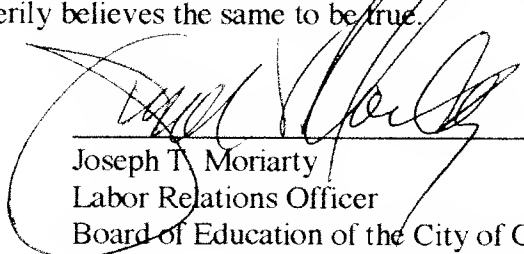
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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September 16, 2012



Joseph T. Moriarty
Labor Relations Officer
Board of Education of the City of Chicago

CERTIFICATE OF SERVICE

I, Elizabeth B. McRee, an attorney, hereby certify that I caused a true and correct copy of the foregoing *Verified Complaint for Temporary Restraining Order, Preliminary and Permanent Injunction and Damages* to be served on the following on this 17th day of September, 2012:


via hand-delivery

Chicago Teachers Union
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via hand-delivery and e-mail:

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BOARD OF EDUCATION OF THE CITY OF)
CHICAGO,)

Plaintiff)

v.)

CHICAGO TEACHERS UNION, Local NO. 1,)
American Federation of Teachers, AFL-CIO,)

Defendant)

Case No: _____

PLAINTIFF'S VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff Board of Education of the City of Chicago ("Board of Education"), pursuant to 115 ILCS 5/1 *et al.* and 735 ILCS 5/11-101 *et al.*, respectfully requests that the Court enter a temporary restraining order, enjoining Defendant Chicago Teachers Union, Local No. 1, American Federation of Teachers, AFL-CIO ("CTU"), its officers, agents, employees, and those persons in active concert or participation with it, from engaging in a strike, picketing, job action or like or similar conduct against the Board of Education. In support of this Motion, the Board of Education has filed a Verified Complaint for Temporary Restraining Order, Preliminary and Permanent Injunction and Damages ("Verified Complaint") and its supporting Memorandum of Law, and in further support states as follows:

1. The Board of Education is charged statutorily with the governance, maintenance and financial oversight of the Chicago Public Schools ("CPS"), the third largest school district in the nation.

2. On September 10, 2012, CTU commenced an unlawful labor strike against the Board of Education. CTU's strike (1) is unlawful under Section 4.5 of the Illinois Educational

Labor Relations Act (“IELRA”) because it is in response to a dispute between the CTU and the Board of Education over permissive subjects of bargaining as defined in Section 4.5 of the IELRA; and (2) constitutes a clear and present danger to the health and safety of the public, within the meaning of Section 13(b) of the IELRA.

3. Through its public pronouncements, literature and contract demands, the CTU has confirmed that it is engaging in this strike over permissive subjects of bargaining as defined in Section 4.5 of the IELRA, which requires the CTU to utilize the parties’ agreed-upon exclusive dispute resolution process to resolve any disputes in lieu of striking over such subjects, including layoff and recall rights, and class size, class staffing and assignment.

4. The CTU has unlawfully, and in violation of Section 4.5 of the IELRA, conditioned any settlement of its labor dispute with, and strike against the Board of Education, on acceptable resolution of its dispute with the Board of Education over permissible subjects of bargaining.

5. As demonstrated in the Board of Education’s Verified Complaint and Memorandum, the CTU’s unlawful strike is causing the Board of Education irreparable harm, and the balance of harms clearly weighs in the Board of Education’s favor.

6. Additionally, the strike constitutes a clear and present danger to the health and safety of the public, within the meaning of Section 13(b) of the IELRA. CPS serves necessary meals to approximately 84% of its students and provides special education and related services to over 50,000 students with special needs. The CTU’s strike is endangering public safety and health because CPS students are being denied essential meals and the special education services they need.

7. Accordingly, an injunction of the CTU strike is warranted to prevent the continuing violation of Section 4.5 of the IELRA and to preserve the alternative dispute resolution process mandated by Sections 4.5 and 12(b) of the IELRA and agreed to by the parties in their Memorandum of Agreement. *See, e.g., Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 26 L. Ed. 2d 199, 90 S. Ct. 1583 (1970). An injunction of the strike also is warranted because it is a clear and present danger to the health and safety of the public.

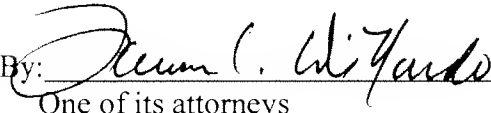
8. WHEREFORE, for the reasons stated above, and as more fully detailed in the accompanying Memorandum, the Board of Education respectfully requests that this Court grant its Motion and enter the following orders:

- A. a Temporary Restraining Order, enjoining the CTU, including its officers, agents, employees, and those persons in active concert or participation with it, from engaging in a strike, picketing, job action or like or similar conduct, and
- B. award such other and proper relief, including monetary relief, as this Court deems appropriate.

Dated: September 17, 2012

Respectfully submitted,

BOARD OF EDUCATION OF THE CITY OF
CHICAGO

By: 
One of its attorneys

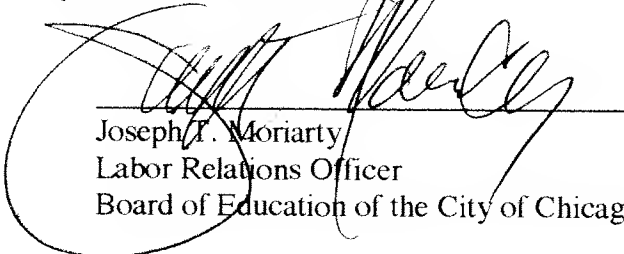
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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September 16, 2012



Joseph T. Moriarty
Labor Relations Officer
Board of Education of the City of Chicago

CERTIFICATE OF SERVICE

I, Elizabeth B. McRee, an attorney, hereby certify that I caused a true and correct copy of the foregoing Plaintiff's Verified Motion for Temporary Restraining Order to be served on the following on this 17th day of September, 2012:

via hand-delivery:

Chicago Teachers Union
222 Merchandise Mart Plaza, Suite 400
Chicago, Illinois 60654

via e-mail and hand-delivery:

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Elizabeth B. McRee

*Attorney for Plaintiff
Board of Education of the City of Chicago*

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

Case No: _____

Plaintiff, Board of Education of the City of Chicago (the “Board of Education”), by its attorneys, respectfully submits this Memorandum of Law in Support of its Motion for Temporary Restraining Order against the Chicago Teachers Union, Local No. 1, American Federation of Teachers, AFL-CIO (the “CTU”). The Board of Education is entitled to the requested injunctive relief from CTU’s illegal labor strike, which commenced on September 10, 2012. The CTU has unlawfully conditioned any new labor agreement with the Board of Education, and resolution of the ongoing strike, on the settlement of disputes over such issues as layoff and recall, length of the work and school year, class size, class staffing and assignment, class schedules, and other permissive bargaining subjects about which CTU may not legally strike under Section 4.5(b) of the Illinois Educational Labor Relations Act (“IELRA”). Therefore, the strike is unlawful and should be enjoined by this Court. Moreover, regardless of CTU’s motivations, the strike presents “a clear and present danger to the health or safety of the public,” and should be enjoined pursuant to Section 13(b) of the IELRA.

II. FACTUAL BACKGROUND

A. The Illinois Educational Labor Relations Act (the “IELRA”)

The IELRA regulates collective bargaining matters between Illinois educational employers and the exclusive bargaining representatives of their employees. The circumstances under which CPS employees may lawfully strike are strictly prescribed under the IELRA.

1. Section 4.5 and Section 12(b)

Section 4.5 was added to the IELRA in 1995 as part of the continued comprehensive legislative reform of the collective bargaining relationship between CPS and the CTU. When initially added to the IELRA, Section 4.5 prohibited the Board and the exclusive bargaining representatives of its employees from negotiating about the Board’s decisions regarding charter schools, subcontracting, layoffs, class size, class staffing and assignment, academic calendar, hours and places of instruction, pupil assessment policies, and pilot programs and the use of technology to deliver such programs. Exhibit X.¹ The parties also were prohibited from bargaining over the impact of these decisions. *Id.* Simultaneously, Section 4.5 prohibited strikes by all CPS employees for an eighteen-month period. *Id.*

In 2003, the Illinois General Assembly amended Section 4.5 of the IELRA to partially allow bargaining that was prohibited under the 1995 legislation. Ex. Y. Under Section 4.5 as amended, the Board of Education retained the unilateral right to decide issues related to Section 4.5 subjects, but was now obligated to bargain with the CTU over the impact of its decision(s) upon request. *See* 115 ILCS 5/4.5. In the event a dispute or impasse arose regarding a Section 4.5 subject, the amended legislation required that the dispute be submitted to an alternative dispute resolution procedure, agreed upon by the parties, that involved mediation and optional

¹ Exhibits to this Memorandum of Law are lettered continuously from those attached to the Verified Complaint. References to exhibits attached to the Verified Complaint are denoted as “VC Ex. __,” while exhibits attached to this Memorandum are referenced hereafter as “Ex __.”

advisory fact-finding. *See id*; *see* 115 ILCS 5/12(b). In compliance with this statutory mandate, the Board and the CTU negotiated and agreed to a procedure to resolve disputes and impasses over Section 4.5 subjects. VC Ex. A. Simultaneously with the creation of this alternative process, Section 4.5 was amended to prohibit strikes by all CPS employees over any Section 4.5 subject - whether a permissive decision or a mandatory impact issue. *See* 115 ILCS 5/4.5(b).

- On June 13, 2011, the Illinois General Assembly enacted Public Acts 097-0007 and 097-0008, commonly referred to as “Senate Bill 7.” Ex. Z. Among other changes, Senate Bill 7 again amended Section 4.5 of the IELRA in two significant respects. Senate Bill 7 expanded Section 4.5’s permissive subjects to include the length of the school and work day and year—an educational priority for CPS. In addition, Senate Bill 7 expressly divested the IELRB of jurisdiction over any dispute or impasse on a Section 4.5 subject. As a result of the 2011 amendments, Section 4.5 “Subjects of collective bargaining” now provides as follows:

(a) Notwithstanding the existence of any other provision in this Act or other law, collective bargaining between an educational employer whose territorial boundaries are coterminous with those of a city having a population in excess of 500,000 and an exclusive representative of its employees may include any of the following subjects:

- (1) (Blank).
- (2) Decisions to contract with a third party for one or more services otherwise performed by employees in a bargaining unit and the procedures for obtaining such contract or the identity of the third party.
- (3) Decisions to layoff or reduce in force employees.
- (4) Decisions to determine class size, class staffing and assignment, class schedules, academic calendar, length of the work and school day with respect to a public school district organized under Article 34 of the School Code only, length of the work and school year with respect to a public school district organized under Article 34 of the School Code only, hours and places of instruction, or pupil assessment policies.
- (5) Decisions concerning use and staffing of experimental or pilot programs and decisions concerning use of technology to deliver educational programs and services and staffing to provide the technology.

(b) The subject or matters described in subsection (a) are permissive subjects of bargaining between an educational employer and an exclusive representative of its employees and, for the purpose of this Act, are within the sole discretion of the educational employer to decide to bargain, provided that the educational employer is required to bargain over the impact of a decision concerning such subject or matter on the

bargaining unit upon request by the exclusive representative. During this bargaining, the educational employer shall not be precluded from implementing its decision. If, after a reasonable period of bargaining, a dispute or impasse exists between the educational employer and the exclusive representative, the dispute or impasse shall be resolved exclusively as set forth in subsection (b) of Section 12 of this Act in lieu of a strike under Section 13 of this Act. Neither the [IELRB] nor any mediator or fact-finder appointed pursuant to subsection (a-10) of Section 12 of this Act shall have jurisdiction over such a dispute or impasse. 115 ILCS 5/4.5 (a), (b) (emphasis added).

2. Section 13(b)

Section 13 of the IELRA limits the circumstances under which educational employees may strike, and provides:

If, however, in the opinion of an employer the strike is or has become a clear and present danger to the health or safety of the public, the employer may initiate in the circuit court of the county in which such danger exists an action for relief which may include, but is not limited to, injunction. The court may grant appropriate relief upon the finding that such clear and present danger exists. An unfair practice or other evidence of lack of clean hands by the educational employer is a defense to such action. Except as provided for in this paragraph, the jurisdiction of the court under this Section is limited by the Labor Dispute Act. 115 ILCS 5/13(b).

B. Negotiations between the Board and the CTU

The Board and the CTU were parties to a collective bargaining agreement that expired on June 30, 2012. Verified Complaint (“VC”) ¶ 17. The Board and the CTU have been engaged in negotiations regarding a successor collective bargaining agreement since November 2011. *Id.* From the outset, the CTU’s contract proposals addressed numerous topics, including a number of Section 4.5 subjects, such as class size, layoff and recall, and class staffing and assignment. VC Ex. B. Since that time, the CTU has repeatedly acknowledged the importance of these subjects to its members and its bargaining agenda, and has unlawfully conditioned any final labor agreement on resolution of disputes over Section 4.5 subjects. *Id.* Below is a summary of the key events leading up to the strike and the important role that Section 4.5 subjects played in each:

- April 2, 2012: CTU invokes the fact-finding process under Section 13(b) of the IELRA, and submits numerous Section 4.5 subjects to the fact-finding process. VC Ex. C.

- June 1, 2012: CTU announces it will conduct a strike authorization vote, and acknowledges the primary disputed issues are class size, staffing levels, layoff and recall, the length of the school and work day, and compensation for working a longer day. VC Ex. F.

- June 11, 2012: CTU reports that more than 75 percent of its members voted to authorize a strike. VC Ex. J.

- July 16, 2012: Fact-finding report released regarding recommendations for the terms of a successor agreement. VC Ex. K.

- July 18, 2012: The Board of Education and the CTU reject the fact-finding report. In its rejection, the CTU identifies its key areas of concern in negotiations are class size, compensation for working a longer day, and layoff and recall. VC Ex. L, M.

- July 23, 2012: The Board of Education and CTU reach an interim agreement on the length of the teacher work day, a matter of primary significance to the parties. Ex. AA.

- Week of August 20-24, 2012: CTU conducts informational picketing “to inform parents and the public about what was at stake” in negotiations. CTU picket signs demand “smaller class sizes” and increased staffing levels for “nurses, counselors and social workers,” and CTU handbills demand smaller class sizes. VC Ex. N and O.

- August 22, 2012: CTU’s House of Delegates vote to give notice of intent to strike. Prior to vote, CTU officials identify the CTU’s three key priorities for a successor contract: layoff and recall; issues related to a longer school day; and "fair compensation ... for work that will be more stressful and challenging." VC Ex. Q.

- August 29, 2012: CTU submits written notice of its intent to strike, stating the imposition of the longer school day, and the requirements to teach new curricula as part of that longer day and be evaluated based on student test results was “enough.” CTU also cites school closings and

the privatization of public education in connection with its intent to strike. VC Ex. R.

- August 30, 2012: CTU's House of Delegates set a strike date of September 10, 2012, without invoking the parties' agreed upon alternative dispute resolution process mandated by Section 4.5 and 12(b) of the IELRA. VC Ex. S.

- September 7, 2012: CTU President Karen Lewis sends a letter to CPS Chief Executive Officer Jean Claude Brizard attempting to disavow CTU's statements and actions over the prior months indicating the noticed strike is over Section 4.5 subjects. VC Ex. U.

- September 9, 2012: CTU Vice President Jesse Sharkey ("Sharkey") states in an interview with ABC7 News Sunday Morning that job security, a Section 4.5 issue, and teacher evaluations, another permissive bargaining subject, are the main sticking points remaining. Sharkey goes on to say that "[i]f we settle on the big education issues we can come to a settlement on this deal." His comments plainly summarize the CTU's bargaining position on the eve of the strike, that any agreement, and avoidance of a strike, was conditioned upon the Board of Education making concessions to CTU's demands on Section 4.5 subjects. VC Ex. V.

- September 9, 2012, in the course of negotiations Sunday evening over the CTU's bargaining demands necessary for an agreement and to avoid a strike, the CTU advised the Board of Education that the CTU's demands regarding the recall rights for laid off CTU members is a "deal breaker."

- Later that night, September 9, 2012, when announcing the CTU strike, Lewis states that "[w]hile new Illinois law prohibits us from striking over the recall of laid-off teachers and compensation for a longer school year, we do not intend to sign an agreement until these matters are addressed." Thus, she expressly conditioned any settlement of the strike and final agreement on the resolution of disputes over Section 4.5 subjects, about which the CTU is prohibited from

striking. VC Ex. W.

- Following commencement of the CTU strike on Monday, September 10, 2012, the parties continued negotiations for a final labor agreement to resolve the strike, with the result that on Friday, September 14, 2012, both sides reported reaching a framework for an agreement to end the strike. Final language on the parties' tentative agreement was presented by the CTU senior bargaining committee to the CTU House of Delegates for a vote to end the strike and return students to school on Monday, September 17, 2012. On the evening of September 16, 2012, the CTU failed to vote on the parties' agreement, failed to vote to end the strike, and scheduled another meeting on the subject of the strike for Tuesday, September 18, 2012. As a result, the CTU has advised that the strike will continue while the House of Delegates reviews the agreement, notwithstanding the continuing harm to the public. VC ¶¶ 4-5.

C. The Harm to Public Safety and Health Created by the CTU Strike

Besides education, CPS provides numerous essential services to students including meals to students who otherwise may not receive proper nutrition, an environment safe from violence, and special needs services.

Each regular school day, CPS serves more than 400,000 breakfasts, lunches, after-school snacks, and suppers to students, providing essential nutrition necessary for healthy growth and intellectual development. Approximately 84% of CPS students, or more than 338,000 kids, are eligible for free and reduced price school meals because of their family income level. For many of these students, these may be their only nutritious meals of the day. These meals provide a critical nutrition and hunger safety net for CPS students. VC ¶ 41. Because of the strike, most CPS students have stopped receiving this necessary nutrition. Moreover, families who qualify for the free and reduced meals program, which is fully funded by the U.S. Department of

Agriculture (“USDA”), also qualify for the USDA’s Supplemental Nutrition Assistance Program (“SNAP”) (formerly Food Stamps). For a qualifying family of four, participating SNAP parents with two school age children enrolled in the free and reduced meals program through CPS receive approximately \$300 from SNAP at the beginning of each month to buy groceries. But this amount already reflects the assumption that the family’s two children who are students at CPS are receiving two or more free or reduced price meals per day, five days a week through CPS. With the schools closed, the vast majority of these children are not receiving meals through CPS. VC ¶ 42.

Aside from the significant logistical obstacles to trying to find and provide food service to hundreds of thousands of students during the strike, USDA regulations require that CPS serve the meals in school. As a result, the CTU strike has created, and each day is exacerbating, a dangerous situation in which hundreds of thousands of Chicago’s children in lower income families are going hungry. At the same time, CPS is facing massive food spoilage and the loss of approximately \$1.25 million per day in USDA funding. VC ¶ 43. This situation will only worsen as parents participating in SNAP exhaust their monthly food allowance without the meals anticipated to be provided to their children at school. This also is a clear and present danger to the health and safety of CPS students. VC ¶ 44.

CPS schools also provide a safe haven for students from violence. VC ¶ 45. While the City of Chicago makes every effort to reduce violence in our neighbourhoods, the fact is that CPS students, like students in many urban areas, are at risk of violence when they are not in school. VC ¶ 2. No CPS student has been a victim of gun violence in a CPS school since at least 2007. Simply put, when students are not in school, they are decidedly less safe and more likely to be victims of gun violence than when they are in school. VC ¶ 45.

In recognition of this clear and present danger to public health and safety, CPS has created and put into place a contingency plan for the strike, referred to as “Children First.” As part of the plan, 147 Children First site locations are open to CPS students. Participation is voluntary, not compulsory, and so some students and families will chose not to participate. Students who are participating in the Children First contingency plan are receiving meals. But the many thousands of students who do not participate in the Children First plan are left without. For example, on September 10, 2012, the first day of the CTU strike, CPS served a total of only 4,800 meals to kids at the Children First sites, down from well over 400,000 meals served on a regular school day. The Children First program is a legitimate and necessary attempt to safeguard CPS students, but it is not enough. The Children First locations cannot accommodate all, or close to all, CPS students affected by the strike. In truth, a significant majority of affected CPS students are left without necessary nutrition or a safe, school environment because of the strike. VC ¶ 46.

In addition, CPS has over 50,000 students with special needs. These include students who suffer from autism, emotional disorders, Down’s syndrome and other severe disabilities. Because of the CTU strike, those special needs students with Individual Education Programs (“IEP”) may no longer receive their required special education services. VC ¶ 47, 49. Students whose special education services are interrupted may suffer from loss of or decline in critical life skills, independent functioning, social and emotional development, behaviors or communication. Without continuation of services, students may not recoup these skills at the same pace as their nondisabled peers. Similarly, interruption of services may disrupt students’ progress in developing critical skills and educational advancement. VC ¶ 49.

III. ARGUMENT

A. The CTU Strike Is Prohibited Under Sections 4.5 and 12(b) of the IELRA.

This Court should enjoin the CTU strike because it is prohibited under Section 4.5 and Section 12(b) of the IELRA. As described above, Section 4.5(a) identifies specific subjects of bargaining between the Board of Education and the CTU—such as layoff and recall rights, class size, and length of the work and school day and year—and requires that any dispute or impasse over those subjects be resolved exclusively pursuant to an alternative dispute resolution process “*in lieu of a strike under Section 13*” of the IELRA. 115 ILCS 5/4.5(a) (emphasis added). The CTU’s strike is in direct violation of this statutory mandate and should be enjoined.

Any dispute over Section 4.5 subjects must be resolved exclusively through the dispute resolution procedure described in Section 12(b) of the IELRA. *See* 115 ILCS 5/12(b). The CTU is prohibited from striking over *any* Section 4.5 subject. *See id.* Section 4.5(b) states, in relevant part, as follows:

If, after a reasonable period of bargaining, a dispute or impasse exists between the educational employer and the exclusive representative, the dispute or impasse shall be resolved exclusively as set forth in subsection (b) of Section 12 of this Act in lieu of a strike under Section 13 of this Act. Neither the [IELRB] nor any mediator or fact-finder ...shall have jurisdiction over such a dispute or impasse. 115 ILCS 5/4.5(b).

Section 12(b) provides that a dispute or impasse over a Section 4.5 subject shall be submitted to the dispute resolution procedure agreed to by the parties. Despite this, CTU has not invoked the parties’ mediation process under Sections 4.5(b) and 12(b). Instead, CTU has unlawfully conditioned any agreement on resolution of its bargaining demands on Section 4.5 subjects, and is engaged in an illegal strike in support of those demands.

The Board of Education is entitled to an injunction from this Court to end the CTU’s illegal strike. Despite the Labor Dispute Act (“LDA”), which generally limits the authority of Illinois circuit courts to enter an injunction in a labor dispute, the Illinois Supreme Court has

long recognized that the LDA “does not deprive circuit courts of jurisdiction to restrain any unlawful act, nor of jurisdiction to determine whether or not any act complained of is legal or illegal.” *City of Pana v. Crowe*, 57 Ill. 2d 547, 316 N.E.2d 513, 549 (quoting *Fenske Bros. v. Upholsterers Intl. Union*, 358 Ill. 239, 257 (1934)). Instead, “circuit courts have the same jurisdiction in labor disputes they have always had” to enjoin unlawful acts, including the power to enjoin an illegal strike by public sector employees. *Id.* at 548-553; *see also Board of Education of Comm. Unit School Dist. No. 2 v. Redding*, 32 Ill.2d 567, 572-576 (1965) (enjoining illegal strike of school custodial employees). Moreover, under the plain language of Section 4.5 of the IELRA, the IELRB does not have jurisdiction over Section 4.5 disputes. *See* 115 ILCS 5/4.5(b). Here, the Board of Education is entitled to an injunction because the CTU’s strike is in flagrant violation of Section 4.5(b), and such statutory violation constitutes sufficient harm to justify injunctive relief. *See, e.g., City of Pana*, 57 Ill. 2d 547, 316 N.E.2d 513, 552-553.

A second, and independent ground, exists for enjoining this strike for running afoul of Section 4.5(b). An injunction is necessary to preserve the alternative dispute resolution process mandated by Section 4.5(b) and Section 12(b) of the IELRA, and agreed to by the parties in their Memorandum of Agreement (VC Ex. A). Illinois courts have recognized an exception to the LDA where (1) an injunction is necessary to preserve the integrity of the parties’ mandatory alternative dispute procedure and (2) ordinary principles of equity warrant issuance of an injunction. *See Amer. Fed. of State, County and Mun. Employees, Council 31 v. Schwartz*, 343 Ill.App.3d 553, 560-67 (Ill. App. 5th Dist, 2003) (recognizing exception to the LDA and enjoining the Department of Central Management Services for the State of Illinois from implementing a layoff plan pending the parties’ mandatory arbitration procedure, where bargaining unit employees would otherwise have suffered irreparable harm as arbitration process

was rendered ineffectual); *Amer. Device Mfg Co. v. Intl. Assoc. of Machinists, Dist. No. 9, et al.*, 105 Ill.App.2d 299, 303-304 (Ill. App. 1969) (LDA “does not prohibit the enjoining of an illegal act,” including enjoining a strike in violation of a no-strike clause in a collective bargaining agreement where the underlying dispute was subject to mandatory arbitration.); *see also Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 26 L. Ed. 2d 199, 90 S. Ct. 1583 (1970) (recognizing exception to federal Norris-LaGuardia Act, which prohibits federal court injunctions in labor disputes, where not enjoining the strike would undermine the parties’ agreed upon mandatory alternative dispute resolution procedure). Here, the Board of Education meets both prongs of the test for this exception to the LDA.

First, if the Court does not enjoin the CTU strike, the parties’ agreed upon and statutorily mandated dispute resolution process will be nullified by the CTU’s strike over Section 4.5 subjects of bargaining. There is no remedy at law that could restore the parties’ statutorily mandated and agreed upon dispute resolution procedure. Without an injunction, the CTU will continue to sidestep the dispute resolution process indefinitely in direct violation of the IELRA. *See Schwartz*, 343 Ill.App.3d at 560-67.

Second, ordinary principles of equity favor the entry of an injunction: the Board of Education is suffering irreparable harm and the balance of the harms favors the Board. *See Boys Markets*, 398 U.S. at 254. Under Illinois law, it is well established that the CTU’s illegal strike over Section 4.5 subjects is irreparable harm warranting injunctive relief. *See City of Pana*, 316 N.E.2d at 552-553 (absent legislative grant of right to strike, a strike by Illinois public employees is unlawful and must be enjoined); *Board of Educ. of Comm. Unit School Dist. No. 2 v. Redding*, 32 Ill.2d 567, 572-576 (1965) (enjoining illegal strike of school custodial employees); *see also Anchorage Educ. Ass’n v. Anchorage Sch. Dist.*, 648 P.2d 993, 997-998 (Alaska 1982) (by

making a teacher strike illegal the legislature decided they would cause irreparable harm); *State of Del. v. Del. State Educ. Ass'n*, 326 A.2d 868, 875-76 (Del. Ch. 1974) (same).

The balance of harms also clearly weighs in the Board's favor, thereby warranting an injunction of the CTU's illegal strike. The Illinois General Assembly codified important public policy prohibiting strikes by CPS employees and their unions over Section 4.5 subjects when it created this statutory alternative framework for resolving disputes in lieu of a strike. The CTU strike contravenes this legislative intent and express public policy and is plainly unlawful. Simply stated, the CTU has no right to condition a final labor agreement on resolution of its bargaining objectives on Section 4.5 subjects, and no right to strike in support of those bargaining demands. Because the Illinois General Assembly divested the IELRB of jurisdiction over disputes or impasses involving Section 4.5 subjects, an injunction by this Court provides the sole remedy for a strike in violation of Section 4.5 of the IELRA. Therefore, an injunction is warranted to preserve the parties' mandatory dispute resolution process and prevent the Board of Education from suffering irreparable harm as a result the CTU's unlawful strike.

B. The CTU Strike Presents a Clear and Present Danger to the Health and Safety of the Public.

Even if the strike were not illegal, which it clearly is, an injunction is warranted because the CTU strike is and has become a clear and present danger to the public health and safety. Pursuant to the plain language of Section 13(b) of the IELRA, an injunction is appropriate and should be entered upon the finding that "the strike is or has become a clear and present danger to the health or safety of the public." 115 ILCS 5/13(b); *see, e.g., City of Naperville and Int'l Bhd. of Elec. Workers, Local 9*, 7 PERI ¶2033, at fn. 3 (ISLRB 1991) (to obtain an order enjoining employees from striking under Illinois Public Labor Relations Act, 5 ILCS 315/18, a non-educational public employer must demonstrate "the withholding of services by those employees

would constitute a clear and present danger to the health and safety of the public.”); *Armstrong Sch. Dist. v. Armstrong Educ. Ass’n, et al.*, 5 Pa. Commw. 378, 291 A.2d 120, 123 (1972) (interpreting statutory provision for injunction of public employee strikes that create “clear and present danger or threat to the health, safety or welfare of the public.”); *see also*, *Central City Educ. Ass’n v. IELRB*, 149 Ill. 2d 496, 599 N.E.2d 892, 901 (Ill. 1992) (Illinois courts regularly rely on public sector labor relations in other states and private sector labor relations under the NLRA).

Under provisions virtually identical to Section 13(b), “danger” means “risk of substantial harm.” *Central Ohio Transit Auth. v. Transport Workers Un. of Amer.*, 1987 Ohio App. LEXIS 6218, *19-20 (Ct. App. Oh. 1987). Further, that risk of substantial harm must be “clear and present”—namely, it must be “clear,” meaning obvious or apparent, and “present,” meaning immediate or existing. *Id.* at *21; *see also Armstrong*, at 124 (court must find that danger is “real or actual and that a strong likelihood exists that it will occur.”).

Section 13(b)’s “clear and present danger” standard thus is satisfied where an Illinois educational employee strike poses an obvious or apparent, as well as an immediate or existing, “risk of significant harm to the health or safety of the general public or segment of the general public, in contravention of the public interest.” *In re Napoleon City Sch. Dist. Bd. of Educ. and Napoleon Faculty Ass’n, OEA/NEA*, 11 OPER ¶1045 (OH PERB 1993); *see also*, *Central Ohio Transit Auth.*, at *23 (holding that injunction against strike must issue where there is “risk of significant harm to person or property created by the strike, which it is in the public interest to protect.”). In addition, it is not necessary to wait to issue an injunction against a strike under Section 13(b) until the public health and safety has been substantially injured. *Central Ohio Transit Auth.*, at *21. Instead, an injunction is warranted where there is a “clear and present

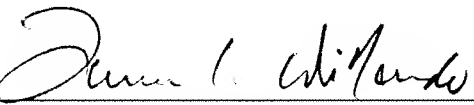
danger that such injury to the public health or safety will occur.” *Id.*

An injunction is warranted here because the CTU strike has created obvious and existing risks of significant harm to public health and safety. The CTU strike has resulted in the denial of nutritious meals to hundreds of thousands of CPS students, students being exposed to the increased risk of violence, as well as the potential denial of critical special education services. The public safety and health is endangered when students do not receive the nutrition necessary for healthy growth and intellectual development; when students are exposed to the risk of increased violence; and when disabled students suffer a loss or decline in critical life skills and independent functioning.

IV. CONCLUSION

WHEREFORE, for the reasons stated herein, the Board of Education respectfully requests that this Court grant the Board of Education’s Verified Motion for Temporary Restraining Order enjoining the strike by the CTU.

Respectfully submitted,
BOARD OF EDUCATION OF THE CITY OF CHICAGO

By _____
One of Its Attorneys

CERTIFICATE OF SERVICE

I, Elizabeth B. McRee, an attorney, hereby certify that I caused a true and correct copy of the foregoing *Memorandum of Law in Support of its Motion for Temporary Restraining Order* to be served on the following on this 17th day of September, 2012:

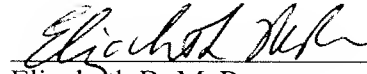
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Attorney for Plaintiff
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BOARD OF EDUCATION OF THE CITY OF)
CHICAGO,)

Plaintiff)

v.)

CHICAGO TEACHERS UNION, Local NO. 1,)
American Federation of Teachers, AFL-CIO,)

Defendant)

Case No: _____

EX PARTE MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

Plaintiff, The Board of Education of the City of Chicago (the "Board of Education"), by and through its undersigned counsel, moves, pursuant to 735 ILCS 5/2-202(a-5), for an Order appointing It's Your Serve as special process server for service of the Board of Education's Complaint and Summons in the above captioned matter. In support of its motion, the Board of Education states as follows:

1. On September 10, 2012, the Board of Education filed a Verified Complaint for Temporary Restraining Order, Preliminary and Permanent Injunction and Damages against the Chicago Teachers Union, Local No. 1, American Federation of Teachers, AFL-CIO in the Circuit Court of Cook County, Chancery Division.

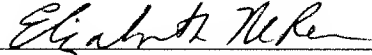
2. Timely service of the Complaint is essential due to the Board of Education's need to have its Motion for Temporary Restraining Order, Preliminary and Permanent Injunction heard in a timely manner.

3. It's Your Serve is a certified private detective agency located at 134 North LaSalle Street, Suite 750, Chicago, Illinois 60602. It's Your Serve's Department of Professional Regulation certificate number is 117-000885.

WHEREFORE, Plaintiff the Board of Education respectfully requests that this Court grant its motion and enter an Order appointing It's Your Serve as its special process server for the service of the Complaint and Summons to Defendant Chicago Teacher's Union.

Dated: September 17, 2012

Respectfully submitted,



Attorney for Plaintiff

BOARD OF EDUCATION OF THE CITY OF CHICAGO

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BOARD OF EDUCATION OF THE CITY OF)
CHICAGO,)

Plaintiff)

v.)

CHICAGO TEACHERS UNION, Local NO. 1,)
American Federation of Teachers, AFL-CIO,)

Defendant)

Case No: _____

ORDER

THIS MATTER COMING before the Court on Plaintiff's EX PARTE MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER, due notice having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED:

1. That Plaintiff's Motion for Appointment of Special Process Server is GRANTED.
2. It's Your Serve, DPR Cert. No. 117-000885, is hereby appointed as Special

Process Server to serve The Board of Education of the City of Chicago's Complaint and Summons on Defendant Chicago Teachers Union.

Order Prepared by:
Elizabeth B. McRee
JONES DAY (No. 39805)
77 West Wacker Drive
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Judge